

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CARL G. SIMPSON AND BONNIE REED
SIMPSON, CO-ADMINISTRATORS OF
THE ESTATE OF CARL D. SIMPSON

CASE NO.: 1:00-cv-14

PLAINTIFFS

JUDGE BERTELSMAN

VS.

NATIONAL UNION FIRE
INSURANCE COMPANY OF PITTSBURGH, PA
ADMINISTRATIVE OFFICES
70 PINE STREET
NEW YORK, NY 10270-0150

DEFENDANT

PLAINTIFF'S MOTION FOR JOURNALIZATION AND NUMBERING OF THE
DEFENDANT'S CLAIMS FILES AND
REQUEST FOR DEFENDANT TO PRODUCE DOCUMENTS

Now come Plaintiffs, by and through counsel requesting the Court order a Journalization and Numbering of the Defendant's Claims Files and Request for Defendant to Produce Documents which Plaintiffs are entitled to pursuant to their breach of contract claim. A Memorandum in Support is attached hereto and incorporated by reference.

Respectfully Submitted,

LAMBERT, McWHORTER & BOWLING

/s/ D. Scott Bowling
D. SCOTT BOWLING (0067617)
ATTORNEY FOR PLAINTIFFS
215 SOUTH 4TH STREET
P. O. BOX 725
IRONTON, OH 45638

MEMORANDUM IN SUPPORT

Plaintiffs have conceded that the Court has discretionary authority to bifurcate the breach of contract claim and the bad faith claims as requested in Defendant's

Motion to Bifurcate and Stay Discovery of the bad faith claim. However, Plaintiffs request the Court order the Defendant to journalize and "Bates number" the claims file, as it existed at the time of denial of coverage to its insured.

The case law as contained in the Defendant's Motion to Bifurcate and Stay Bad Faith Claims Discovery clearly indicates that the Plaintiffs will be entitled to attorney/client privilege documents as well as the so-called work product documents in the discovery phrase of their bad faith claims.

Counsel for the Plaintiffs request that the Court order the Defendant to number each page of the entire existing claims file as it existed at the time of the denial and request the Court order the production of the non-protected documents within thirty days of its order to produce such documents.

An attempt was made with the counsel for the Plaintiff to come to an agreement as to the request made before the Court at this time, however no such agreement was reached. Plaintiff's counsel believes this request is in line with law as outlined in Defendant's Motion to Bifurcate and Stay such as Garg v. State Automobile Mutual Ins. Co, 155 Ohio App.3d 258; 800 NE2d 757 (2003). Further, since Plaintiff's will later be entitled to the entire claims file upon the successful determination of the Plaintiff's breach of contract claim, numbering the pages as they existed at the time of the denial of the claim would preserve the record and prevent potential alteration of the file.

Attached hereto and marked as 'Exhibit 1' to this

Motion is a proposed Entry outlining the request of the relief sought in this Motion.

LAMBERT, McWHORTER & BOWLING

/s/ D. Scott Bowling
D. SCOTT BOWLING (0067617)
ATTORNEY FOR PLAINTIFFS
215 SOUTH 4TH STREET
P. O. BOX 725
IRONTON, OH 45638
attys@cloh.net
740-532-4333
740-532-7341 fax

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response was forwarded on this the 15th day of June 2005 by electronic filing to the United States District Court. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

LAMBERT, McWHORTER & BOWLING

/s/ D. Scott Bowling
D. SCOTT BOWLING (0067617)
ATTORNEY FOR PLAINTIFFS
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IRONTON, OH 45638
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